

## **REMARKS**

### **The Claim Objections**

Applicants note that their previous response reinstated claims 3 and 15. Accordingly, the designation of claims 3 and 15 as “(Original)” is now believed correct. Applicants request notification from the examiner, should Applicants be mistaken in this belief.

### **The Rejections under 35 U.S.C. §§ 102(b)**

Claims 1, 13, and 32-33 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,007,246 to *Kinigakis et al.* (“*Kinigakis*”). Applicants respectfully traverse, noting that *Kinigakis* does not disclose a reclosable fastener that is located substantially parallel to a side edge.

*Kinigakis* discloses fasteners positioned at an angle between sides of a bag. In particular, *Kinigakis* discloses fasteners oriented at “an angle within the range of approximately 25° to 65°, with respectively the upper horizontal and the vertical side edges . . .” (Col. 6:3-5). The fasteners of *Kinigakis* are thus located at an angle to the side edges, rather than substantially parallel thereto. Claim 1 and amended claim 13 are thus both patentable over *Kinigakis* for at least the reason that they recite a reclosable fastener “oriented substantially parallel to the first side edge . . .” Claims 32 and 33 depend from claims 1 and 13 respectively, and are thus also patentable for at least this same reason.

### **The Rejections under 35 U.S.C. §§ 103(a)**

Claims 1, 10, 13, and 22 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,687,848 to *Scholz et al.* (“*Scholz*”), in view of supposedly admitted prior art. Applicants respectfully traverse, noting that *Scholz* does not disclose every element of Applicants’ claims as amended. More specifically, *Scholz* does not disclose a zipper or slider, and in fact teaches away from their use. As *Scholz* does not disclose a zipper or slider, it also cannot disclose a reclosable fastener having a zipper or slider, that is located substantially parallel to a side edge.

Claims 4 and 16 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kinigakis* in view of U.S. Patent No. 3,387,701 to *Schneider et al.* (“*Schneider*”). Applicants respectfully traverse, noting that neither reference discloses a reclosable fastener that is located substantially parallel to a side edge. Furthermore, *Kinigakis* and *Schneider* teach away from each other.

***Scholz***

As noted previously, *Scholz* teaches magnetic fasteners. Examiner cites to 8:36-39 of *Scholz* as disclosing zipper-type fasteners. However, this portion of *Scholz* does not disclose zipper-type fasteners. Rather, it discloses interlocking magnetic strips, which are different from a zipper-type fastener. One of ordinary skill in this art does not consider interlocking magnetic strips to be a zipper-type fastener. Furthermore, it is Examiner’s burden to present evidence that the two are considered the same. *KSR Int’l. v. Teleflex Inc.*, 550 U.S. \_\_\_, 14 (2007) (quoting *In Re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements”). Examiner has not done so, and thus has not met the burden required to show that interlocking magnetic strips are zipper-type fasteners, especially in light of a commonly-accepted understanding that the two are different.

Furthermore, *Scholz* explicitly teaches against use of zipper-type fasteners. In particular, *Scholz* teaches that its invention is intended to provide hermetically-sealed bags for use in storing moisture-curable synthetic splinting materials that require a moisture-impermeable seal (Col. 1:33-40). *Scholz* goes on to teach that zipper-type fasteners do not provide hermetic seals, and are thus undesirable:

The opening must be sealed between uses to avoid moisture penetration of the package and, therefore, curing of the product within the package. The disclosed methods of sealing the opening include clamps, such as tongue and groove scissor clamp; moisture-proof pressure-sensitive adhesive tape; a “ZIPLOC™” brand-type seal; and gaskets used in conjunction with spring-loaded compression, leverage clamping or screw action devices.

These methods have proven less than desirable in use. The more secure of the devices are difficult to use which increases the amount of time the package is open during use, thereby allowing moisture to enter and harden the material therein. Conversely, the sealing methods which are easy to use form seals of questionable integrity which allow moisture penetration into the package even when the seal is closed.

(Col. 2:29-42) (emphases added)

In other words, to serve as the basis of a proper rejection, *Scholz* must disclose the use of zipper-type fasteners. Quite to the contrary, *Scholz* teaches against use of zipper-type fasteners. Claims 1 and 13 are thus patentable over *Scholz* for at least the reason that they recite a “zipper . . .” Claims 10 and 22 depend from claims 1 and 13 respectively, and are thus also patentable for at least this same reason.

Additionally, as *Scholz* does not disclose zipper-type fasteners, it cannot disclose reclosable fasteners with zipper-type fasteners, and certainly cannot disclose reclosable fasteners located substantially parallel to a side edge. Claim 1 and amended claim 13 are thus both patentable over *Scholz* for at least the reason that they recite a reclosable fastener having a zipper slider, and “oriented substantially parallel to the first side edge . . . .”

#### ***Kinigakis and Schneider***

*Kinigakis* does not disclose a reclosable fastener located along a side edge. Rather, its fastener is located at an angle relative to its side edge (e.g., FIG. 1). *Schneider* does not remedy the deficiencies of *Kinigakis*. *Schneider* does not teach a reclosable fastener at all. Thus, *Schneider* cannot teach a standup bag having a reclosable fastener located along a side edge. Accordingly, Applicants’ claims as amended are patentable over *Kinigakis* and *Schneider* for at least the same reasons as above.

Also, *Kinigakis* teaches away from *Schneider*. In particular, *Schneider* teaches a bag that must be cut in order to form a pour spout. *Schneider*’s bags cannot be resealed, thus allowing the bags’ contents to spoil or otherwise go bad. *Kinigakis* teaches reclosable fasteners specifically designed to allow for resealing so as to prevent this problem.

**CONCLUSION**

In view of the above, it is respectfully submitted that Claims 1, 3-4, 10, 13, 15-16, 22, and 32-33 are now in condition for allowance.

The Examiner is invited to call Applicant's attorney at the number below in order to speed the prosecution of this application.

The Commissioner is authorized to charge any deficiencies in fees and credit any overpayment of fees to Deposit Account No. 50-2257.

Respectfully submitted,

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Date of Signature